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ORACLE AMERICA, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE, INC.

Defendant.

Case No. CV 10-03561 WHA

**SECOND DECLARATION OF FRED
NORTON IN RESPONSE TO
DECLARATIONS SUBMITTED ON
BEHALF OF GOOGLE**

Dept.: Courtroom 4, 3rd Floor
Judge: Honorable Donna M. Ryu

1 I, FRED NORTON, declare as follows:

2 1. I am a partner with the law firm of Boies, Schiller & Flexner LLP, attorneys for plaintiff
3 Oracle America, Inc. in the above captioned matter, and admitted to practice before this Court.

4 2. I make this declaration based on my own personal knowledge. If called as a witness, I
5 could and would testify competently as to the matters set forth herein.

6 **Google Privilege Log Entries For Documents Authored By Mr. Lindholm**

7 3. I have read Mr. Lindholm's August 15, 2011, declaration and his August 17, 2011,
8 corrected declaration. I understand that Mr. Lindholm states, on information and belief, the "auto-save"
9 feature of Google's email system saved unfinished drafts of an email that he eventually sent on August
10 6, 2010, and that these "auto-saved" drafts are the documents at issue on Oracle's motion to compel. I
11 further understand that Mr. Lindholm states, in paragraph 12, that in drafting that email "adding the
12 addresses of Mr. Lee and Mr. Rubin was one of the last things I did" and that the "auto-saved" emails
13 "do not show the words 'Attorney Work Product' or 'Google Confidential' because adding those words
14 is one of the last things I did."

15 4. Google produced its Fifth Supplemental Privilege Log to Oracle on August 15, 2011, as an
16 Excel spreadsheet. Members of my office staff, acting at my direction, used the Excel autofilter feature
17 to isolate the log entries that identify Mr. Lindholm as the author. A true and correct copy of excerpts
18 of the Google Fifth Supplemental Privilege Log that identify Mr. Lindholm as the author is attached as
19 Exhibit 1. The log contains 856 separate entries listing Lindholm as the author, either as
20 Lindholm_Tim, Tim Lindholm, or Tim Lindholm (lindholm@google.com).

21 5. As indicated on Exhibit 1, many entries authored by Mr. Lindholm have sequential
22 document identification numbers, identical dates, identical recipients, identical copyees, and identical
23 descriptions. These appear to be additional examples of "auto-saved" drafts.

24 6. Of the 856 entries identifying Mr. Lindholm as the author, in every example that appears to
25 be an "auto-saved" draft, every single successive version of the document has the exact same content in
26 the "To:" fields and the "cc:" fields, except for the three Lindholm Withheld Emails. That is, according
27 to Google's privilege log, the only time that Mr. Lindholm ever drafted a privileged email and waited
28

1 until he was finished to add a lawyer's name and "Attorney Work Product" or "Google Confidential"
 2 was when he drafted his August 6, 2010 email. The only apparently intended addressee in the
 3 salutation of that email (at least in the Lindholm Document that was quoted by Judge Alsup in open
 4 court on July 21) was Andy Rubin.

5 **Publication of Lindholm Document in Press and by Google**

6 7. Attached as Exhibit 2 hereto is a true and correct copy of a printout from
 7 <http://googleblog.blogspot.com/2006/01/google-in-china.html>, which purports to be an entry dated
 8 January 27, 2006 on the Official Google Blog. That document states that in January 2006, Google
 9 launched a website for the Peoples' Republic of China, and that in order to do so, Google "agreed to
 10 remove certain sensitive information from our search results." The document further states that
 11 "Chinese regulations will require us to remove some sensitive information from our search results.
 12 When we do so, we'll disclose this to users, just as we already do in those rare instances where we alter
 13 results in order to comply with local laws in France, Germany and the U.S."

14 8. Attached as Exhibit 3 is a true and correct copy of a printout from
 15 <http://www.google.com/transparencyreport/faq/>, which purports to be a page from the google.com
 16 domain describing Google's policies for removing content from its services, including web search. On
 17 that web page Google states, among other things, the following:

18 Do you ever remove content that violates local law without a court order or
 19 government request?

20 Yes. The statistics we report here do not include content removals that we
 21 regularly process every day across our products for violation of our content
 22 policies (for example, we do not permit hate speech in Blogger and other similar
 23 products) in response to user complaints. In many cases these requests result in
 the removal of material that violates local law, independent of any government
 request or court order seeking such removal.

24 9. In my declaration dated August 15, 2010, I stated that Google itself continues to make the
 25 contents of the Lindholm Document widely available, and cited examples of Google searches, limited
 26 to the last month, that resulted in hundreds or thousands of references to the Lindholm Document, with
 27

1 quotations of the allegedly privileged content appearing on the Google search page itself. I have since
 2 conducted those same searches, and as of the date of this declaration those facts are unchanged.

3 **Google's Characterization of the Purpose of the Lindholm Documents**

4 10. I have read Mr. Lee's August 15, 2011, declaration and his August 17, 2011, corrected
 5 declaration. I understand Mr. Lee states, in paragraphs 7 and 8 of his declaration, that Mr. Lindholm
 6 attended a meeting on July 30, 2010, the purpose of which was "to formulate a response to Oracle's
 7 infringement claims," and further states that Mr. Lindholm performed work after July 30 "on issues
 8 related to Oracle's infringement claims."

9 11. Mr. Lindholm's declaration states, at paragraph 7, that he was asked at the July 30 meeting
 10 to "gather information for Google's lawyers and management to consider in evaluating technology
 11 issues related to Oracle's infringement claims."

12 12. The Lindholm Document (GOOGLE-12-00039565) makes no reference to any
 13 infringement claims by Oracle.

14 13. [REDACTED]
 15 [REDACTED]
 16 [REDACTED]

17 Similarly, at the *Daubert* hearing on July 21, 2011, Google counsel Robert Van Nest stated that "The
 18 alternatives we're talking about here [in the document] might be simply alternative languages" (First
 19 Norton Decl. Ex. I at 42:11-13) – not the infringement claims that Oracle asserted.

20 14. Oracle did not assert, before, on, or after July 20, 2010, that use of the Java programming
 21 language by Google would be infringement. Oracle has never asserted infringement claims against
 22 Google based on the use of the Java *language*.

23 15. [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 19, 2011, at Oakland, California.

4

SECOND DECLARATION OF FRED NORTON IN RESPONSE TO DECLARATIONS SUBMITTED ON BEHALF OF
GOOGLE
CASE NO. CV 10-03561 WHA